



United States General Accounting Office
Washington, DC 20548

Office of the General Counsel

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November 9, 1999

The Honorable Robert C. Smith
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Environmental Protection Agency: Persistent Bioaccumulative Toxic (PBT) Chemicals; Lowering of Reporting Thresholds for Certain PBT Chemicals; Addition of Certain PBT Chemicals; Community Right-to-Know Toxic Chemical Reporting

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA), entitled "Persistent Bioaccumulative Toxic (PBT) Chemicals; Lowering of Reporting Thresholds for Certain PBT Chemicals; Addition of Certain PBT Chemicals; Community Right-to-Know Toxic Chemical Reporting" (RIN: 2070-AD09). We received the rule on October 29, 1999. It was published in the Federal Register as a final rule on October 29, 1999. 64 Fed. Reg. 58666.

The final rule lowers the reporting thresholds for certain persistent bioaccumulative toxic chemicals that are subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990. Among other actions, the final rule adds other chemicals to the EPCRA section 313 list of toxic chemicals.

Enclosed is our assessment of the EPA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the EPA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Peter Guerrero, Director, Environmental Protection Issues. Mr. Guerrero can be reached at (202) 512-6111.

Sincerely yours,

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. Thomas E. Kelly
Director, Office of Regulatory
Management and Information
Environmental Protection Agency

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"PERSISTENT BIOACCUMULATIVE TOXIC (PBT) CHEMICALS;
LOWERING OF REPORTING THRESHOLDS FOR CERTAIN
PBT CHEMICALS; ADDITION OF CERTAIN PBT CHEMICALS;
COMMUNITY RIGHT-TO-KNOW TOXIC CHEMICAL REPORTING"
(RIN: 2070-AD09)

(i) Cost-benefit analysis

EPA performed a cost-benefit analysis of the final rule. The final rule's industry costs are estimated to be \$145 million in the first year and \$80 million in subsequent years. EPA is expected to expend \$2.0 million in the first year and \$1.6 million in subsequent years as a result of the final rule.

EPA states that it did not attempt to estimate the monetary value of the benefits expected from the approximately 20,000 toxic chemical release forms to be filed each year under the rule. It believes that the science is insufficiently developed to support such an estimate. However, in qualitative terms EPA believes that the information will have significant benefits, such as facilitating the assessment of risks posed by activities involving toxic chemicals, assisting in evaluating the success of existing regulatory programs and in guiding future programs, and providing data for research.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Administrator of EPA has certified that the final rule will not have a significant economic impact on a substantial number of small entities. The determination is based on the small entity impact analysis that EPA performed as part of its Economic Analysis of the final rule. This analysis showed that the economic impacts on small entities will be relatively slight based on the entire population of small entities potentially affected.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

While the final rule will not impose an intergovernmental mandate, the rule will impose a mandate on the private sector in excess of \$100 million in any one year. Therefore, EPA has prepared the written statement required by the Act.

The statement contains both qualitative and quantitative assessments of the costs of the rule and qualitative assessments of the benefits of the rule. In the final rule preamble, EPA discusses (1) the alternatives considered, (2) the fact that it considers the alternative selected to be the most effective, and (3) that the benefits outweigh the costs imposed by the rule.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

The final rule was issued using the notice and comment procedures contained at 5 U.S.C. 553 and under the authority of section 328 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11048.

EPA issued two Notice of Proposed Rulemakings on May 7, 1997, and January 5, 1999, 62 Fed. Reg. 24887 and 64 Fed. Reg. 688, respectively, which form the basis of the final rule. In the preamble to the final rule, EPA responds to the comments it received following an extension of the comment period and holding three public meetings with interested parties.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains an information collection (EPA Toxic Chemical Release Inventory Form R) that has already been approved by the Office of Management and Budget (OMB) and issued OMB Control No. 2070-0093. However, EPA has submitted a new Information Collection Request (ICR) to OMB to include the additional burden associated with the lower reporting thresholds.

The final rule is estimated to result in reports from 11,300 respondents. Of these, 3,100 facilities are estimated to be reporting under EPCRA section 313 for the first time as a result of the rule, while 8,200 are currently reporting facilities that will be submitting additional reports. These facilities will submit an estimated additional 20,000 Form Rs. The rule, therefore, results in an estimated total burden of 2.1 million hours in the first year and 1.2 million hours in subsequent years, at a total estimated industry cost of \$145 million in the first year and \$80 million in subsequent years. The existing ICR will be amended to include an additional annual burden of 1.5 million hours (annual average burden for the first 3 years of ICR approval).

Statutory authorization for the rule

The final rule is issued pursuant to the authority of sections 313(d)(1) and (2), 313(f)(2), 313(g), 313(h), and 328 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11023(d)(1)-(2), 11023(f)(2), 11023(g), 11023(h), and 11048, and section 6607 of the Pollution Prevention Act of 1990, 42 U.S.C. 13106.

Executive Order No. 12866

The final rule was found to be an “economically significant” regulatory action under the Order and was reviewed and approved by the Office of Management and Budget as complying with the Order’s requirements.